IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3558 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMLESHBHAI BAILALBHAI PATEL - Petitioner(s)
Versus
RAMANBHAI AMBALAL PATEL - Respondent(s)

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Appearance :
MR VIJAY H PATEL for Petitioner(s) : 1,
MR UM SHASTRI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/11/2006

ORAL JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner seeks to challenge the order dated 23.12.93 passed by the

Collector in Revision Case No. 76/93 and the order dated 22.3.95 passed by the Secretary [Appeals], whereunder, the revision filed by the respondent was allowed by the Collector and the revision filed by the present appellant was dismissed by the Secretary [Appeals].

2. The short facts necessary for disposal of the present petition are that the petitioner had purchased 1 Acre and 14 Gunthas of land of survey no.106/1 of village Vatadara, Taluka-Khambhat, District-Kheda, from Ambalal Patel, father of the present respondent Ramanbhai in the year 1974. On 16.10.79 mutation entry in favour of the petitioner came to be made in the revenue records and was certified on 16.10.79, as entry no.4455.

3. The entry made in the year 1979 and certified in the same year came to be challenged by the present respondent after the death of the vendor Ambalal Patel. The appeal was dismissed, being aggrieved by the said order, the respondent preferred a revision/appeal to the Collector, who, by his order dated 3.7.93 allowed the

revision and held that the mutation entry was bad, because, the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 [in short “Fragmentation Act”] were not looked into. After setting aside the entry, the Collector directed the concerned authority to make an inquiry under Section 9[1][2][3] of the Fragmentation Act. As the revision against the said order passed by the Collector was dismissed by the Secretary [Appeals], the petitioner is before this Court.

4. Mr. Asim Pandya, learned counsel under the authority of the Mr.V.H.Patel, submitted that an appeal against the order of a mutation entry would be maintainable if filed within 60 days from the date of the final order, but in the present case, the entry of 1979 was challenged by filing an appeal on 27.8.92. According to him, such an application was not maintainable and the Collector, without looking into the provisions of the Limitation Act, could not allow the said appeal. His further submission is that the violation of the Fragmentation Act and

the other laws cannot be looked into nor can be examined in mutation proceedings. Referring to Section-3 of the Indian Limitation Act, 1963, he submits that even if the limitation is not set up as a defence, it shall be the duty of every court to see that the proceedings which are not filed within the limitation are rejected at the threshold.

5. Shri B.G. Patel, learned counsel under the authority of Mr. U.M. Shastri submits that even if the question of limitation was not considered by the authority, a valid order passed by the Collector and confirmed by the Secretary [Appeals] in exercise of his revisional powers cannot now be set aside, because, consequent to the order passed by the Collector, an inquiry had already been made. He submits that the sale made by the father of the present respondent, if was in violation of the provisions of law and the sale is *void ab initio* then, the limitation cannot be set up as an defence.

6. It is not in dispute before me that the entry is required to be challenged in appeal within 60

days from the date of the entry. If such appeal is not filed within the limitation, then, the party aggrieved by the entry or the order would be entitled to maintain an appeal with an application under Sec.5 of the Indian Limitation Act making prayer for extension of time and seeking condonation of delay. If such application is not made, then, the proceedings will have to be dismissed even if the limitation has not been set up as defence. Sec.3 of the Indian Limitation Act, 1963 clearly provides that subject to the provisions contained in Sec.4 to 24 [inclusive], every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. The language in which Sec.3 is couched clearly mandates that it shall be the duty of every Court to see that the proceedings presented before it are initiated well within the limitation and not otherwise. If the Court/quasi-judicial authority is satisfied that the proceedings have been initiated within the

limitation, it may proceed further, but in case it finds that the proceedings have not been initiated within the period of limitation, then, it shall dismiss the matter unless such proceeding is associated with an application under Sec.5 of the Limitation Act seeking extension of time and condonation of delay or under Sec.14 of the Limitation Act for exclusion of time which was spent in bona fide litigation before the court which had no jurisdiction.

7. In the present matter, undisputely, the entry was certified on 16.10.79 and the appeal came to be filed on 27.8.92, that is, almost after about 13 years. If such application is to be entertained, then, the provisions of the Limitation Act shall become otiose, they would become nugatory and no sanctity would be attached to the same. I must hold that the appeal filed before the first authority was patently barred by limitation and it could not be entertained.

8. So far as the question of proceedings under Sec.9[1][2][3] of the Fragmentation Act are

concerned, the same were initiated after passing of the order by the Collector and if the order of the Collector is held to be bad, then, any consequent proceedings initiated under the order of the Collector would also fall to the ground. One cannot be allowed to take advantage of the consequent proceedings if the main proceedings are not maintainable.

9. The Supreme Court has, time and again, said that the order, which is void would still be an order in the eyes of law unless it is annulled by a competent court or it is so declared by the competent authority/forum. According to the respondent, the transfer was void, if that be so it was required to be challenged in appropriate proceedings. The respondent would not be allowed to challenge the voidness of the transfer in the mutation proceedings. If the respondent was of the opinion that the transfer and mutation proceeding were void, then, he was required to challenge the transfer which he failed.

10. Considering the case from every angle, I am of

the opinion that the order passed by the Collector in Revision Case No. 76/93 on 3.7.93 and the order passed by the Secretary [Appeals] on 22.3.95 are bad, without jurisdiction and do not meet the requirements of the law. I must also add at this stage that the question of limitation was raised before the Secretary [Appeals], but for the reasons best known to him, even after referring to the arguments, he did not advert his attention to the said question nor did he decide the same. The said orders are quashed, the petition is allowed. The order passed by the Deputy Collector is restored and the entry no. 4455 certified on 16.10.79 is directed to be restored.

11. The petition is allowed. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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